Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

REPLY COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

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Windstream Communications, Inc., on behalf of itself and its affiliates (collectively "Windstream"), submits the following reply comments in response to the Federal Communications Commission ("Commission") request for comment on its Notice of Inquiry and Notice of Proposed Rulemaking addressing existing high-cost universal service support and the development of the Connect America Fund ("CAF").[1]

I. INTRODUCTION AND SUMMARY

Windstream supports FCC Chairman Julius Genachowski's assessment that "maintaining the status quo for USF . . . is not an option."[2] As recognized by the Chairman and by

[1] *Connect America Fund; A National Broadband Plan for our Future; High Cost Universal Service Support*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, Notice of Inquiry and Notice of Proposed Rulemaking (rel. April 21, 2010) ("*NOI and NPRM*").

[2] Prepared Remarks of Chairman Genachowski, 47th Annual OPASTCO Summer Convention and Trade Show, Seattle, Washington, July 28, 2010, at 3 (Genachowski Remarks to OPASTCO).

commenters within this proceeding, the current, "uneven distribution of subsidies to different carriers serving rural America" has produced an untenable "rural-rural divide."[3] On one side of this divide, select high-cost areas have received substantial federal universal service support, which has been used for deployment of cutting-edge Fiber to the Home networks in remote regions. But on the other side of the divide, many high-cost areas—exhibiting cost conditions no different from those receiving generous support—receive little or no universal service funding and do not present a rational economic case for deploying broadband service. The existence of these disparities, as was recently noted by Chairman John D. Rockefeller of the Senate Committee on Commerce, Science, and Transportation, runs counter to Section 254 of the Communications Act, which directs the Commission to provide a baseline level of telecommunications and information services to consumers in all regions of the nation.[4] Gross disparities in how high-cost support is allocated must be eliminated if the Commission hopes to

[3] *Id*. at 4. Comments of United States Telecom Association, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 7 (July 12, 2010) (USTelecom Comments) (stating that "[c]onsumers should be neither penalized nor rewarded by the accident of the identity of their broadband provider, the granularity of the calculation of the support for their broadband provider, nor by the regulatory scheme under which that provider operates"); Comments of CenturyLink, Inc., WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 7 (July 12, 2010) (CenturyLink Comments). *See also* Comments of Verizon and Verizon Wireless, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 12-15 (July 12, 2010) (Verizon Comments) (noting that per-line support to rate-of-return ILECs has increased dramatically in the past five years, and stating that the "flow of existing universal service dollars from price cap ILECs to ROR ILECs is not sustainable in the long run").

[4] Letter from Sen. John D. Rockefeller IV, Chairman, Senate Committee on Commerce, Science, and Transportation, to the Hon. Julius Genachowski, Chairman, Federal Communications Commission, at 2 (Aug. 2, 2010) (Rockefeller Letter).

achieve federal statutory objectives and meet the National Broadband Plan's goal of connecting all corners of our nation to affordable broadband and voice services.[5]

Comments in this proceeding confirm that high-cost support for existing carriers of last resort will continue to be critical for operation and enhancement of rural networks. Other entities show scant interest in deploying services throughout high-cost areas and assuming provider-of-last-resort obligations. Wireless providers voice no meaningful desire to deploy fixed wireless broadband to unserved households,[6] and cable providers' comments focus on cutting off support to their competitors, rather than on how they might assume provider-of-last-resort responsibilities.[7] This lack of interest in rural deployment—even if subsidized in part through universal service funding—confirms the reality that wireless and cable providers would have to incur large capital and operating costs if they were to offer service throughout high-cost areas, and that they would prefer not to make this investment.

It is vital that the Commission gain a deeper appreciation of the scope of the broadband investment gap, which will drive much of its funding challenges, before locking in decisions about the size of the Connect America Fund ("CAF") and a timeline for meeting deployment goals. Relying on the $24 billion gap estimate, cited in the National Broadband Plan, may be

[5] Federal Communications Commission, Connecting America: The National Broadband Plan at 141 (rel. March 16, 2010) (National Broadband Plan).

[6] *See, e.g.,* Comments of CTIA – The Wireless Association®, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 20-28 (July 12, 2010) (CTIA Comments) (not mentioning fixed wireless, but devoting a large section to the alleged need for the Commission to support mobile broadband at speeds lower than the Commission's 4 Mbps download threshold).

[7] *See, e.g.*, Comments of Comcast Corporation, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 9 (July 12, 2010) (Comcast Comments) (advocating reduction of support to carriers in areas where unsubsidized competition is present in at least part of the region).

like leaning on a thin reed. Parties' comments[8] and recent Commission estimates of the number of unserved households[9] suggest that this broadband investment gap figure is built on a foundation of assumptions that may prove to be unstable, and it is essential that the Commission accurately quantify this gap before finalizing details of the CAF. To do otherwise may lead to unfunded mandates—particularly for existing carriers of last resort, i.e., the parties most willing and able to serve as broadband and voice providers of last resort in high-cost areas. As Windstream has noted in the past, such unfunded mandates are likely to drive away providers

[8] *See, e.g.*, Comments of AT&T Services, Inc., WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 16 (July 12, 2010) (AT&T Comments) (noting that the OBI White Paper erroneously concludes assumes that the current industry standard wireline configuration delivers 1 Mbps upload speeds, when in fact it typically delivers 768 Kbps and achieving 1 Mbps would require additional investment not contemplated by the OBI White Paper); Comments of Nebraska Rural Independent Companies, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 34-35 (July 12, 2010) (Nebraska Rural Independents Comments) (stating that county-wide averaging of the investment gap likely substantially reduced the final size of the gap); CenturyLink Comments at 50 (observing that middle-mile costs appear to be underestimated). *See also supra* Section II.B. (reviewing various comments that identify ways in which the OBI White Paper likely underestimates the cost of meeting the broadband availability gap with fixed wireless facilities).

[9] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act; A National Broadband Plan for Our Future*, GN Docket Nos. 09-137, 09-51, Sixth Broadband Deployment Order at ¶ 1 (rel. July 20, 2010) (suggesting that the number of Americans lacking access to robust broadband may be as high as 24 million, rather than the 14 million Americans projected by the National Broadband Plan). *See also* Prepared Remarks of FCC Commissioner Mignon L. Clyburn, Mid-America Regulatory Conference, Annual Conference, Kansas City, Missouri, June 8, 2010 (noting that "broadband subscribership data the FCC obtains from providers suggests that up to 24 million Americans may not have access to broadband at home").

from the Universal Service Fund and its attendant obligations, thus both stalling broadband deployment and degrading existing communications services in high-cost areas.[10]

Pending the development of comprehensive policy, the Commission should act immediately to harvest certain "low-hanging fruit" and address the largest flaws in the current high-cost program. For instance, the Commission should implement the agreed-to phase-out of Competitive Eligible Telecommunications Carrier ("CETC") support to Verizon Wireless and Sprint and, in the longer term, eliminate all CETC support. The Commission also must act now to begin to reduce the rural-rural divide by distributing high-cost support according to the cost conditions of areas, rather than the size and regulatory status of the carriers serving them. Consistent with Chairman Rockefeller's position, rate-of-return carriers' support should be brought in line with what they would receive under an incentive-based regime, and broadband support should be targeted first toward deployment of "baseline" broadband services to all Americans.[11] Rate-of-return carriers' objections to these long overdue reforms are overblown. Doomsday scenarios depicted in their comments fail to take into account or likely significantly underestimate the new CAF support that would replace reductions in legacy high-cost support,[12] and largely disregard the opportunities carriers will have to become more efficient.

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[10] *See* Comments of Windstream Communications, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 23 (July 12, 2010) (Windstream Comments).

[11] Rockefeller Letter at 2 ("A more sensible and efficient system—that delivered true universal service—would focus less on the size of the carrier providing the service and more on providing support to those areas that lack service today.").

[12] *See, e.g.*, Comments of NECA et al., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 39-43 (July 12, 2010) (NECA Comments) (apparently not considering any future CAF funding).

Funds freed up by high-cost reforms could be immediately repurposed to support broadband deployment, and later form the opening deposit into a nascent CAF. Initially, the Commission could enhance the impact of high-cost funds by dedicating them to an accelerated process that enables broadband deployment in unserved areas. Any competitive bidding regime used to implement this process should incorporate three measures. First, there should be a clear-cut mechanism to ensure that no broadband provider is rewarded for having failed to invest when a business case for deployment already can be made. This assurance could be accomplished, for example, with the imposition of a minimum private investment requirement before a subsidy kicks in (such as the $800-per-household benchmark proposed in the Broadband Now Plan put forth by Windstream and others),[13] or with an assessment of revenue/expense forecasts for project areas, like those conducted for the broadband stimulus programs.[14] Second, accelerated process funds should be made available only for up-front capital expenditures dedicated to deployment of second-mile facilities. Second-mile deployment projects often can readily leverage existing facilities and serve as a platform for scalable wireline and wireless services, maximizing "bang for the buck" out of limited funds. Third, performance requirements should apply evenly across all technologies, to wireless and wireline broadband providers alike.

[13] Comments of CenturyLink, Consolidated Communications, Frontier Communications Corporation, Iowa Telecommunications Services, Inc., and Windstream Communications, Inc., GN Docket. No. 09-51 (Dec. 7, 2009) (Broadband Now Plan). Under the Broadband Now Plan, if it cost $1,000 to deploy broadband to an unserved household, the provider would be required to put forth the first $800 and would receive support for the remaining $200 of deployment costs.

[14] *See* Broadband Initiatives Program, Broadband Technology Opportunities Program, Notice of Funds Availability, 74 Fed. Reg. 33103, 33115 (July 9, 2009) (BIP and BTOP NOFA).

The Commission, simultaneously, should work on developing long-run CAF reforms that will transform the high-cost regime comprehensively. Designing appropriate cost models and establishing key parameters for distributing support will be critical for successful implementation of reform efforts. For consistently high-cost areas requiring ongoing support for operation and maintenance of networks, the Commission, as a default, should assess costs and award support on a wire center basis, but should permit any would-be challengers to propose use of alternate geographic units in individual areas where they would assume high-cost responsibilities. For distribution of one-time funding for broadband deployment to unserved households in areas that are not consistently high-cost, a pick-your-own-geographic-unit regime should be used to identify the best-qualified provider and the minimum level of subsidy required to achieve the desired build-out. Counties have no place in a rational assessment of network costs, nor should they drive allocation of funds needed to support future broadband and voice offerings.

II. COMMENTS SUGGEST THAT THE COMMISSION SHOULD BE SKEPTICAL OF CLAIMS THAT ENTITIES OTHER THAN THE EXISTING CARRIERS OF LAST RESORT WILL BE MORE ECONOMICAL—OR EVEN WILLING—TO OFFER COMMUNICATIONS SERVICES THROUGHOUT HIGH-COST AREAS.

Taken as a whole, the comments make clear that entities other than the existing carriers of last resort are unlikely to be able—or willing—to offer communications services in an economical fashion throughout high-cost areas. Wireless providers in their comments both explicitly and implicitly demonstrate a focus on expanding mobile rather than fixed services, and express *no* significant interest in deploying fixed wireless to, and serving as providers of last resort in, unserved areas. This lack of emphasis on fixed wireless evidences the likelihood that

the provision of fixed wireless service is less economic than wireline service and the probability—noted by numerous commenters—that the OBI White Paper[15] underestimates the cost of meeting the broadband availability gap with fixed wireless facilities. Cable providers, which offer robust broadband service in many low-cost areas, show more interest in cutting off support to their competitors than in assuming build-out and carrier-of-last-resort roles in high-cost areas. And while it may be worth considering whether satellite broadband would be a viable option to serve a very small number of extremely high-cost areas, technological and capacity limitations render satellite broadband infeasible to serve the vast majority of unserved areas.

A. Wireless Providers' Comments Emphasize Mobile Wireless and Express No Meaningful Interest in Deploying Fixed Wireless to, and Serving as Providers of Last Resort in, Unserved Areas.

Wireless providers commenting in this proceeding express no meaningful interest in deploying fixed wireless to, and serving as providers of last resort in, unserved areas. Comments by wireless providers demonstrate a strong focus on expanding mobile wireless rather than deploying fixed facilities. Tellingly, CTIA—The Wireless Association®, which represents a large number of wireless broadband providers, does not once refer to "fixed wireless" in its 31-page comments, but devotes a section to the argument that the Commission must provide sufficient support for mobile broadband services.[16] T-Mobile USA, Sprint, and the Rural Cellular Association critique the fact that the OBI White Paper analysis does not include mobile

[15] Omnibus Broadband Initiative, The Broadband Availability Gap (OBI Technical Paper No. 1) (OBI White Paper).

[16] *See* CTIA Comments at 20-28.

wireless,[17] and U.S. Cellular states outright that the OBI White Paper "improperly focuses on fixed wireless deployments."[18] This lack of focus on fixed wireless suggests that the provision of fixed wireless service to unserved areas is less economic than wireline service.

In addition, the wireless commenters almost universally oppose a regime in which one provider per area would receive support—and thus they further evince both a lack of willingness to assume provider-of-last-resort obligations, and a lack confidence in their ability to put forth the lowest-cost deployment proposals. Establishment and maintenance of provider-of-last-resort services in high-cost areas requires a significant capital investment, and expenses vary little with the addition or subtraction of individual customers. Nevertheless, nearly all of the wireless commenters express support for a winner-takes-more regime and portable support that would follow the consumer rather than the provider.[19] Such a framework promotes cherry-picking of the lowest-cost customers in generally high-cost areas, is not technology-neutral because

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[17] Comments of T-Mobile USA, Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 12 (July 12, 2010) (T-Mobile Comments); Comments of Sprint-Nextel Corporation, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 2 (July 12, 2010) (Sprint Comments) (opining that "the NOI's emphasis on speeds, and its exclusion of any discussion of the benefits of mobility, constitute a distressing and potentially insurmountable bias in favor of wireline broadband solutions"); Comments of Rural Wireless Association, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 19 (July 12, 2010) (RWA Comments) (noting that the OBI White Paper "does not address the cost of building a mobile wireless network that provides service to rural citizens ***where they live, work and travel***") (emphasis in original).

[18] Comments of United States Cellular Corporation, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 22 (July 12, 2010) (U.S. Cellular Comments).

[19] *See* CTIA Comments at 29 (reiterating support for a "winner-takes-more" approach); U.S. Cellular Comments at 13, 18-21 (asserting that "in most rural areas a fixed amount of support can attract one or more carriers, with support transferring among carriers competing for customers"); Sprint Comments at 8; Comments of USA Coalition, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 42 (July 12, 2010) (USA Coalition Comments).

providers have different per-unit costs, and is wholly incompatible with the mission to maintain high-quality networks for consumers living in the highest-cost parts of America. CTIA, in asserting that the Commission should provide operating expense support for competing providers as well as providers of last resort, essentially concedes that, under a single-recipient support regime, wireless likely would not be the chosen technology for provider-of-last-resort service.[20] Furthermore, reinforcing many parties' questions about whether fixed wireless service can reliably provide service at the 4 Mbps download speed target,[21] several of the wireless commenters oppose using 4 Mbps as a threshold for receipt of support.[22] Sprint expressly concedes that "the plan's unilateral emphasis on aggressive speed levels very likely will render wireless carriers ineligible to draw from the CAF."[23]

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[20] *See* CTIA Comments at 30 (noting that "because operating expenses ("opex") are often a significant barrier to the deployment of wireless networks—especially higher-capacity broadband networks—the availability of competitive opex support would leave the door open to other [wireless] providers in the future").

[21] *See infra* notes 33-36. Verizon states that it "plans to launch 4G service with 5-12 Mbps average download speeds in up to 30 markets (covering 100 million people) by the end of 2010, and to extend this 4G coverage throughout its current 3G footprint in 2013. Verizon Wireless also plans to work with rural carriers in order to collaboratively build and operate a 4G network that will bring the benefits of 4G service to even more rural areas." Verizon Comments at 31-32. Verizon also notes current and planned 4G offerings by Sprint and AT&T. *Id.* at 32. However, Verizon does not state clearly whether its 4G service would fulfill the 4/1 Mbps speed target for individual households, or to what extent it or any other carrier plans to deploy 4G service meeting the Commission's requirements to currently unserved households.

[22] *See, e.g.*, CTIA Comments at 28 (asserting that "the Commission should not implement any speed threshold in a manner that discriminates against technologies such as mobile wireless"); USA Coalition Comments at 50 (putting forth a distribution proposal that "eliminates artificial distinctions based on . . . current speed of service").

[23] Sprint Comments at 6.

Finally, in recent comments in response to the Commission's *Notice of Inquiry* on the proper classification of broadband Internet service,[24] wireless providers argue—and even emphasize—that limited spectrum resources hinder their ability to meet growing consumer demand for broadband. As CTIA asserts in that proceeding, "wireless broadband network operators cannot simply build additional facilities or expand the size of existing facilities to increase capacity."[25] MetroPCS explains that "whereas wired providers can always lay more cable to increase capacity, wireless providers currently are facing an acute lack of available wireless spectrum."[26] T-Mobile USA adds that "[a]s Americans utilize more and more data, additional spectrum suitable for mobile broadband is not readily accessible."[27] Though such general assertions of spectrum limitations are insufficient reinforcement for wireless providers' claims that their broadband service should receive a different regulatory classification than other broadband services, [28] wireless carriers' statements do cast doubt on the wisdom of investing CAF funding

[24] *Framework for Broadband Internet Service*, GN Docket No. 10-127, Notice of Inquiry (rel. June 17, 2010).

[25] Comments of CTIA – The Wireless Association®, GN Docket No. 10-127, at 57 (July 15, 2010).

[26] Comments of MetroPCS Communications, Inc., GN Docket No. 10-127, at 38 (July 15, 2010). *See also* Comments of Verizon and Verizon Wireless, GN Docket No. 10-127, at 78 (July 15, 2010) (noting that "the complexities [in managing allocation of spectrum] are compounded by limited spectrum resources, which mean a provider cannot readily increase capacity").

[27] Comments of T-Mobile USA, Inc., GN Docket No. 10-127, at 3 (July 15, 2010). *See also* Comments of Leap Wireless International, Inc., and Cricket Communications, Inc., GN Docket No. 10-127, at 6-7 (July 15, 2010).

[28] *See* Comments of Windstream Communications, Inc., GN Docket No. 10-127 (to be filed Aug. 12, 2010).

in wireless, given the wireless providers apparently believe that their infrastructure cannot easily be leveraged to support higher-speed services in the future.

B. Comments Establish That the OBI White Paper Underestimates the Cost of Using Fixed Wireless to Fill the Broadband Availability Gap.

The OBI White Paper identifies fixed wireless as the least-cost technology in many of the country's unserved areas,[29] but numerous commenters indicate that there is good reason to be skeptical of this conclusion. The parties' concerns include, but are not limited to, the following:

- The OBI White Paper's fixed wireless solution is based on an announced 4G network deployment, with no solid evidence that this build-out will reach unserved areas or provide reliable service at the Commission's targeted speed threshold.[30] Commission staff acknowledges in the OBI White Paper that some wireless 4G technologies arguably have not yet "been shown to be capable of providing carrier class broadband."[31]
- Some of the assumptions in the OBI White Paper likely mask the fact that wireless technologies at present cannot be counted on to deliver 4 Mbps service consistently. For example, several parties note that the OBI White Paper does not account for the top 10 percent of broadband users when modeling wireless network capacity requirements

[29] OBI White Paper at 62.

[30] *See, e.g.*, CenturyLink Comments at 48-49 (asserting that "the cost development for fixed wireless access is questionable at best and highly speculative at worst").

[31] OBI White Paper at 2; *See also* Nebraska Rural Independents Comments at 20 (stating that "[i]t is extraordinary for the Commission to presuppose that an untested technology will succeed, particularly in light of some past experiences with technologies that failed to measure up to expectations").

and costs.[32] Because these users account for about 65 percent of network capacity needs,[33] their exclusion significantly alters the assessment of network capacity, and the White Paper offers no rational basis for this decision. In addition, the OBI White Paper assumes that each fixed wireless cell site has the capacity to support 650 customers,[34] when a more reasonable estimate is 100-120.[35]

- The OBI White Paper contains unwarranted assumptions about the availability of towers to provide wireless broadband service, and thus underestimates the costs of towers needed for deploying fixed wireless to unserved areas.[36]

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[32] *See, e.g.*, Nebraska Rural Independents Comments at 15 (noting that "[t]he only way this estimate might be acceptable is if those heavy 10% users know when the network busy hour occurs and, for some reason, elect to shut down their Internet usage during that period," and "[t]he probability of such an occurrence is essentially zero"); Comments of ADTRAN, Inc., WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 4-5 (July 12, 2010) (ADTRAN Comments) (indicating that "the OBI figure is artificially truncated," and "there are no references providing support or rationale for this truncation"). *See also* Windstream Comments, Appendix at 2.

[33] OBI White Paper at 90, 111.

[34] OBI White Paper at 60.

[35] *See* Nebraska Rural Independents Comments at 16; ADTRAN Comments at 7-8 (noting that the capacity estimate is "unrealistically high," and if more reasonable variables are used, a wireless cell can support 100-120 customers). *See also* CenturyLink Comments at 49 (stating that "once more rigor is exercised surrounding the propagation and capacity characteristics of wireless cell cites the cost results will be higher").

[36] *See* Nebraska Rural Independents Comments at 22 (noting that OBI White Paper concludes a new tower is needed about 15 percent of the time, when this is "not even close to reality for rural Nebraska"). *See also* Windstream Comments, Appendix at 3-4, 6 (noting that the OBI White Paper acknowledges that it "potentially overstate[s] the current footprint," and estimating that an additional $350,000 to $450,000 in costs are required each time a tower is presumed present, but actually would need to be constructed and maintained).

- It would be difficult for most fixed wireless providers to obtain two 20 MHz blocks of spectrum, as contemplated by the White Paper analysis, and more limited holdings generally are not capable of providing a fully functioning fixed wireless broadband system.[37] Furthermore, the OBI White Paper analysis does not account for any costs associated with the lease of spectrum.[38]

Independently, these shortcomings are troubling enough, but when considered in combination, they show that the OBI White Paper's conclusions regarding the capabilities and cost of fixed wireless broadband service may be deeply inaccurate, and that fixed wireless is not in fact a feasible solution for offering provider-of-last-resort broadband and voice services to millions of unserved Americans.

C. Cable Providers Demonstrate Far More Interest in Cutting Off Support to Their Competitors Than in Assuming Provider-of-Last-Resort Roles in High-Cost Areas.

The commenters from the cable industry appear to be interested primarily in cutting off support to their competitors rather than in assuming provider-of-last-resort roles and obligations in high-cost areas. In particular, the National Cable & Telecommunications Association ("NCTA") reiterates its support for its November 2009 proposal to establish a process for reducing support to carriers in areas where unsubsidized competition is present in at least part of

[37] Nebraska Rural Independents Comments at 24 (noting that "large national carriers such as Verizon tend to be the only carriers likely to hold enough spectrum to have a reasonable chance of providing satisfactory broadband service"). *See also* Windstream Comments, Appendix at 5.

[38] *See, e.g.*, Nebraska Rural Independents Comments at 23-24; AT&T Comments at 16; Windstream Comments, Appendix at 9.

the region.[39] NCTA promotes this proposal as an improvement over the current universal service regime. But as Windstream discussed at length in its response to the NCTA Petition last year, NCTA's proposed "triggers" for launching support reduction proceedings introduce new problems: The triggers do not accurately assess the need for provider-of-last-resort support and could lead to undue reductions in universal service support awarded to carriers of last resort in high-cost areas.[40] NCTA's "competition trigger" is impracticable because the presence of a competitor in one portion of a study area does not demonstrate that high-cost support throughout the whole study area should be reduced or eliminated.[41] Indeed, according to a study cited by NCTA in its Petition, only 21 percent of rural study areas have cable telephony available to 50 percent or more of households in the study area.[42] The NCTA's "deregulation trigger" is

[39] Comments of the National Cable & Telecommunications Association, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 10 (July 12, 2010) (NCTA Comments) (citing Petition for Rulemaking of the National Cable & Telecommunications Association, attached to Letter from Neal M. Goldberg, Vice President and General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 09-51 (filed Nov. 5, 2009) (NCTA Petition)). *See also* Comcast Comments at 9; Comments of American Cable Association, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 10 (July 12, 2010) (ACA Comments).

[40] Comments of Windstream Communications, Inc., WC Docket No. 05-337, GN Docket No. 09-51, RM-11584, at 7-8 (Jan. 7, 2010) (Windstream Response to NCTA Petition).

[41] *Id.* (noting that "[t]he fact that a competitor has established a presence in *one* part of a service area—even a substantial part—says nothing about whether the carrier of last resort is receiving too much support to serve the remainder, let alone establish a presumption that the carrier *is* over-supported.")

[42] *Id*. at 8.

similarly unworkable because state deregulation of certain ILEC rates has little to do with whether a carrier of last resort's support levels are too high.[43]

If adopted, NCTA's proposed reforms could jeopardize the ability of carriers of last resort to offer core communications services throughout high-cost areas. This risk, however, appears not to concern NCTA and its member companies, because now, as with its Petition last year, NCTA does not express any meaningful interest in cable providers' offering communications services throughout unserved areas, with or without high-cost support.

D. Satellite Broadband Currently Is Infeasible as a Large-Scale Solution.

Satellite broadband providers appear to be poorly suited to serve as the voice and broadband providers of last resort in the vast majority of unserved, high-cost areas. As ViaSat admits, "today's satellite broadband service is one of last resort,"[44] and the service is "in the earlier stages of its technology life cycle."[45] Satellite broadband providers' claims about future deployments and service predictions are speculative,[46] and it is impossible to verify their accuracy. At present, satellite broadband is far more expensive than available wireline offerings,

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[43] *Id*. at 13.

[44] Comments of ViaSat, Inc. and WildBlue Communications, Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 4 (July 12, 2010) (ViaSat Comments).

[45] *Id*. at 6.

[46] *See* ViaSat Comments at 4 (claiming that broadband satellite can serve all unserved households with 4/1 Mbps service within six years); Comments of Hughes Network Systems, LLC, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 2 (July 12, 2010) (Hughes Comments) (asserting that satellite broadband providers will be able to serve 3 million households at the targeted speeds by 2012, without high-cost support).

and far less robust.[47] Satellite-based broadband continues to have high latency, which makes it unsuitable for voice service as well as certain Internet functions, such as video-based applications like teleconferencing, that are important for consumers in rural areas.[48] At best, satellite broadband is suited to provide service to a small number of the hardest-to-reach households.

III. ARGUMENTS RAISED BY RATE-OF-RETURN COMPANIES DO NOT JUSTIFY ANY DELAY IN ADDRESSING THE EXISTING RURAL-RURAL DIVIDE.

The National Broadband Plan's proposals would trigger a transformation of the universal service regime, and comments in this proceeding indicate that the rate-of-return carriers and their allies are convinced they need to gird for battle to preserve their way of life. The National Exchange Carrier Association ("NECA") *et al.* and some other commenters argue that it is clear, even at this early stage in the reform process, that the Plan, with its insistence on limiting growth in the Fund and focus on deployment of "baseline" 4 Mbps broadband in unserved areas, would violate Section 254's requirement of "specific, predictable, and sufficient" universal service

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[47] For example, HughesNet markets 3 Mbps download, 300 Kbps upload service—its fastest offering—for $189.99 per month ($169.99 for the first three months), with a $99.00 equipment and installation fee. *See* HughesNet Package Deals and Offers, *available at* http://www.satellitestarinternet.com/hughesnet_plans_pricing.html. In contrast, Windstream markets 3 Mbps service—not even its most robust offering—for $29.99 per month to its telephone customers, and $34.99 per month to others, with no extra equipment cost. *See* Connect to Windstream, *available at* http://www.connecttowindstream.com/index.html?mrc=ps-ctws-g-b-windstream. The most robust offering by ViaSat's WildBlue is 1.5 Mbps download, 256 Kbps upload, for $79.95 per month with a two-year contract, a $99.95 equipment fee, a $99.95 account setup fee, and a $24.95 shipping fee. *See* WildBlue Availability and Offers, *available at* http://www.wildblue.com/getWildblue/doServiceAvailabilitySearchAction.do.

[48] *See* Nebraska Rural Independents Comments at 50-51.

mechanisms and the provision of comparable and affordable services to all Americans.[49] TDS asserts that "it is far too early in the process of reforming the USF to foreclose the possibility that additional funding will be necessary if the Commission is to adhere to its statutory obligation to make broadband services available in rural areas at levels reasonably comparable to those in urban areas."[50]

Windstream recognizes that the Commission should accurately quantify the broadband investment gap before finalizing details regarding the size of the CAF and timeline for accomplishing its objectives. And in an ideal world, there would be an unlimited amount of high-cost support to enable build-out of fiber to every home in America, and the rate-of-return carriers could retain the regulatory status quo. In the real world, however, 7 million to 12 million households are unserved by broadband capable of meeting the Commission's speed target—most because there is no economic case for build-out under the existing Universal Service Fund regime—and the Commission and Congress appear to have no appetite for substantial growth in the size of the Fund. Given these realities, the Commission must not delay in beginning to redirect high-cost funding to eliminate the rural-rural divide. To this end, the Commission should require the transition of rate-of-return carriers to incentive regulation, as recommended in

[49] *See* NECA Comments at 10-16. *See also* Comments of ICORE, Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 12-17 (July 12, 2010) (ICORE Comments). *See also* Comments of John Staurulakis, Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 3 (July 12, 2010) (JSI Comments) (arguing that adopting the proposals in the *NOI and NPRM* and establishing a 4 Mbps speed target would be "arbitrary and capricious").

[50] Comments of TDS Telecommunication Corporation, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 4 (July 12, 2010) (TDS Comments).

the National Broadband Plan,[51] (or pursue other measures to bring their support in line with what they would receive under an incentive-based regime) and focus on targeting broadband support first toward deployment of "baseline" service in all areas.

A. Despite Rate-of-Return Carriers' Objections, the Commission Should Require a Transition to Incentive Regulation, or Should Pursue Other Measures to Bring Rate-of-Return Carriers' Support in Line with that of Incentive-Regulated Carriers.

Given the desire to limit growth of the high-cost program and direct funding to new broadband deployment, the Commission will only be able to achieve the National Broadband Plan's deployment goals by more efficiently and equitably distributing the existing pool of support. An essential component of this effort will be either transitioning rate-of-return carriers to incentive regulation or pursuing other measures to bring their support in line with what they would receive under an incentive-based regime. As Windstream and numerous parties noted in their comments, rate-of-return regulation as implemented tends to motivate carriers to spend more than is efficient simply to increase the rate base on which they earn their profits.[52] In practice, this leads many rate-of-return carriers to seek and receive universal service support to fund Fiber to the Home in their high-cost areas.[53]

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[51] National Broadband Plan at 147.

[52] *See, e.g.*, Verizon Comments at 18; CTIA Comments at 16; Sprint Comments at 12; T-Mobile USA Comments at 6; Comments of Time Warner Cable Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 8 (July 12, 2010) (Time Warner Comments); Windstream Comments at 35-36.

[53] According to the Fiber-to-the-Home Council, approximately 750 smaller carriers were offering Fiber to the Home to a total of about 1.3 million homes (an average of approximately 1,700 homes per provider) as of March 30, 2010. *See* Fiber-To-The-Home: North American Market

Many comparably challenged high-cost areas served by price cap carriers, meanwhile, receive little or no support and thus lack an economic case for broadband deployment.[54] Funding for these high-cost areas can be insufficient because the existing universal service regime distributes support to price cap carriers based upon average costs among wire centers—some high-cost and others lower-cost—within an entire state or study area (which are typically larger than the study areas served by rate-of-return carriers). The Commission must address the rural-rural divide produced by the current high-cost program rules if it intends to utilize high-cost support to reach the final 7 to 12 million unserved households.

In an apparent attempt to weaken the Commission's resolve toward reform, rate-of-return carriers and their allies paint various doomsday scenarios that would result from the high-cost program reforms suggested in the National Broadband Plan. NECA *et al.* asserts that freezing ICLS on a per-line basis will cause half of all study areas to have negative regulated cash flows in 2015, and 86 percent of study areas to have negative regulated cash flows by 2020.[55] Fred Williamson & Associates, Inc., a consultant to rate-of-return carriers, predicts that if the Commission adopts its proposals for universal service and intercarrier compensation reform, rate-of-return carriers will lose 40 to 65 percent of their revenues, with many falling bankrupt or

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Update at 8-9 (April 2010), *available at* http://www.ftthcouncil.org/sites/default/files/RVA.FTTH_.Apr10.040712Final.pdf

[54] *See, e.g.*, Verizon Comments at 12-15 (noting that per-line support to rate-of-return ILECs has increased dramatically in the past five years, and stating that the "flow of existing universal service dollars from price cap ILECs to ROR ILECs is not sustainable in the long run").

[55] NECA Comments at 39-40.

going out of business.[56] John Staurulakis, Inc. predicts RLECs will turn to rate increases, employee layoffs, and the curtailment of all planned investment.[57] ICORE, another RLEC consultant, states that there is a significant risk that RLECs will default on loans.[58]

Some rate-of-return carriers may well see a reduction in high-cost support if the Commission implements its reforms (just as some rate-of-return carriers may see an increase in support), but these doomsday scenarios are overstated. Most importantly, the calculations cited above either are not taking into account or likely are significantly underestimating the CAF funding that would replace reductions in legacy high-cost support. For example, NECA's calculations apparently do not consider any future CAF funding,[59] and Fred Williamson & Associates' calculations are based on "minimal CAF revenues (estimated 10% of current USF funding)" to fund new broadband deployment, and no CAF funding for maintenance or operation of existing facilities.[60]

Contrary to the perception these parties apparently are attempting to create, the National Broadband Plan does not state any intention to desert rate-of-return carriers in a reformed high-cost program. The Plan proposes to continue offering support for deployment, operation, and

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[56] Comments of Fred Williamson & Associates, Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 2-3 (July 12, 2010) (Fred Williamson Comments).

[57] JSI Comments at 11-12.

[58] ICORE Comments at 7. To the extent that these loans are provided by government agencies, Windstream queries whether it is good policy to permit federal loans to be repaid using universal service funding.

[59] NECA Comments at 39-43. NECA does not attach the survey results on which these calculations are based.

[60] Fred Williamson Comments at 15.

maintenance of broadband and voice service in truly high-cost areas.[61] Rate-of-return carriers even likely would receive transitional support to "pay off the mortgage" on Fiber to the Home investments that have been made in good faith.[62] Windstream and other carriers have successfully navigated the transition from rate-of-return to incentive-based regulation and the resultant decrease in high-cost support;[63] there is no good reason why other prudently managed rate-of-return companies could not experience substantially similar results. If the Commission hopes to achieve ambitious deployment goals with limited funds, it must move away from providing dollar-for-dollar returns on the investments of rate-of-return carriers.

B. To Shrink the Rural-Rural Divide and Meet the National Broadband Plan's Stated Goal of Deploying Broadband to All Americans, the Commission Should Fund Deployment of Baseline Broadband Service Before Supporting Enhancements to Existing Service.

Similarly, if the Commission intends to limit the growth of the high-cost program, it is infeasible at this stage to devote universal service funding toward the deployment of 100 Mbps service to rural areas. Universal service funding as it currently operates has enabled some rate-of-return carriers to deploy state-of-the-art fiber networks in some rural areas—some of the best

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[61] *See* National Broadband Plan at 151 (stating that "the objective over time is to develop a mechanism that supports the provision of affordable broadband and voice in all areas, both served and unserved, where governmental funding is necessary").

[62] *See* National Broadband Plan at 141 (noting that the Commission "should target areas that are currently unserved, while taking care to ensure that consumers continue to enjoy broadband and voice service that are available today"), 143 (stating that "new rules should be phased in over a reasonable time period"). Windstream proposes such a glide path for rate-of-return carriers in its suggested reforms to the high-cost program. *See* Windstream Comments at 43.

[63] *See NOI and NPRM* at fn.123.

in the world. However, the bulk of rural, high-cost communities have little or no broadband access, often because the companies that serve them—price cap companies such as Windstream, Frontier, CenturyLink, Qwest, and AT&T—cannot access that level of support through the Universal Service Fund.[64] It would be inexcusable to continue to fund upgrades to some of the most robust networks in the nation before millions of other rural Americans have access to any broadband. As Senate Committee on Commerce, Science, and Transportation Chairman Rockefeller recently stated, "A more sensible and efficient system—that delivered true universal service—would focus less on the size of the carrier providing the service and more on providing support to those areas of the country that lack service today."[65] The best way to achieve this result, given a limited amount of funding, is first to direct broadband support to universal deployment of 4 Mbps service to all areas.

No one contests that there will be increasing demand for greater broadband speeds in the coming years. However, as Chairman Genachowski recently noted, a universal speed level of 100 Mbps would require $320 billion in additional USF support, placing a burden on consumers that the Commission will not countenance.[66] Given existing funding constraints, the solution is not, as TDS advocates, to build an eight-lane road to some consumers,[67] while other consumers in similarly remote areas lack access to the two-lane road they currently need. Instead, a more

[64] *See* National Broadband Plan at 141.

[65] Rockefeller Letter at 2.

[66] Genachowski Remarks to OPASTCO at 6.

[67] *See* TDS Comments at 6 (asserting that setting a 4 Mbps target now "would be akin to a municipality beginning construction on a two-lane road today despite knowing that the community will require at least an eight-lane road to meet the level of traffic projected for future years").

prudent response to future demands would be (1) in the short term, to consider a technology's scalability rather than just its short-term cost when evaluating its suitability for high-cost funding, and (2) in the long term, to raise speed thresholds for funding eligibility, and provide funding in an equitable fashion, after all Americans can receive baseline broadband service.

In particular, a common-sense approach to broadband deployment in the near term is to focus on establishing high-speed second-mile connectivity via fiber while continuing to utilize existing last-mile infrastructure. An initial investment in second-mile fiber will bring baseline broadband to unserved Americans and lay the groundwork for continued advancements in broadband services offered by both wireline providers and wireless providers (which often rely on second-mile fiber connectivity for new and existing cell sites). Down the road, as customers' bandwidth needs grow, it might be feasible to augment existing last-mile facilities or replace them with fiber. This incremental approach would most efficiently bring broadband to all unserved areas while laying a strong, usable foundation for increased speeds in the future.

IV. THE COMMISSION SHOULD DEVELOP AN INTERIM PROCESS THAT UTILIZES COMPETITIVE BIDDING TO FUND BROADBAND DEPLOYMENT IN UNSERVED AREAS.

Initially, the Commission could enhance the impact of funds freed up by long overdue high-cost reforms by dedicating them to an "accelerated process" that enables broadband deployment in unserved areas[68] Windstream generally supports the basic framework proposed

[68] *See NOI and NPRM* at ¶ 43.

by the 71 Concerned Economists,[69] including the concept that applicants themselves would define the unserved areas covered by their proposals.[70] In addition, Windstream agrees with many of the suggested details and refinements put forth by Qwest and AT&T in their comments.[71] Qwest in particular puts forth a comprehensive expansion of the 71 Concerned Economists' proposal that the Commission should examine closely and mine for implementation ideas.[72]

In designing its "accelerated process," the Commission should adopt the following measures to ensure that any competitive bidding or alternative process directs funding as sensibly as possible. First, the bid selection criteria must address "cost effectiveness" in a manner that ensures that funding does not support deployment to households where there is already a rational economic case for deployment, or where the investment can be supported by

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[69] Paul Milgrom, Gregory Rosston, Andrzej Skrzypacz & Scott Wallston, "Comments of 71 Concerned Economists: Using Procurement Auctions to Allocate Broadband Stimulus Grants," (April 13, 2009) (submitted to the National Telecommunications & Information Administration and Rural Utilities Service) (71 Economists' Proposal), Appendix B to *NOI and NPRM*. Windstream also encourages further consideration of CenturyLink's proposal to launch a small program that distributes broadband funding to price cap carriers with the highest density of unserved households. *See* CenturyLink Comments at 55-56.

[70] *See NOI and NPRM* at ¶ 45; *infra* Section V.C.

[71] *See* AT&T Comments at 6 (proposing a competitive application process in which a provider would submit an application under seal to a reviewing authority, which would score the application based on clearly defined criteria); Comments of Qwest Communications International, Inc., WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 6-9 (July 12, 2010) (Qwest Comments) (proposing a detailed competitive-bidding process—including pre-certification, bid selection criteria, and availability of counter-bids for areas where 50 percent overlap can be demonstrated).

[72] *See* Qwest Comments at 6-9.

current prices.[73] An upper limit on assistance, as Qwest proposes, is useful to ensure that the limited funding available is directed toward deployment to the largest possible number of households.[74] However, the Commission also must adopt a clear-cut mechanism to ensure that no broadband provider is rewarded for having failed to invest when a business case for deployment already can be made. This assurance could be accomplished, for example, with the imposition of a minimum private investment requirement before a subsidy kicks in (such as the $800-per-household benchmark proposed in the Broadband Now Plan put forth by Windstream and others).[75] Alternatively, the selection process could include an assessment of revenue/expense forecasts for project areas, like those conducted for the broadband stimulus programs.[76] After a new, accurate cost model is developed, the model can be used as a backstop to help ensure appropriate funding levels and pinpoint areas where support is needed.[77]

Second, for the purposes of this accelerated process, funding should be made available only for capital expenditures dedicated to second-mile deployment. Second-mile deployment projects often can readily leverage existing deployments and serve as a platform for scalable

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[73] *See* Verizon Comments at 31 (noting that "[w]hile the objective of accelerating broadband deployment is appropriate in principle, the Commission must design any fast track proposal carefully to ensure that an expedited process remains consistent with the need to limit CAF support to only those areas in which there is no private sector business case for the market to deploy broadband").

[74] Qwest Comments at 9.

[75] *See* Broadband Now Plan. Under the Broadband Now Plan, if it cost $1,000 to deploy broadband to an unserved household, the provider would be required to put forth the first $800 and would receive support for the remaining $200 in deployment costs.

[76] *See* BIP and BTOP NOFA, 74 Fed. Reg. at 33115.

[77] *See* Windstream Comments at 17-18.

wireline and wireless services, ensuring that the Commission gets the most "bang for the buck" out of limited funding.[78] Fiber deployments within a wireline provider's second mile are frequently utilized to satisfy "middle mile" needs of wireless broadband providers.[79] Furthermore, the focus on capital expenditures will increase the likelihood that this support will receive favorable tax treatment, because in certain circumstances, the Internal Revenue Service treats governmental payments to private parties for the purpose of making capital investments to advance public purposes as contributions to capital, which generally are not taxed.[80] This approach also will offer administrative simplicity because it limits the expenses for which providers can seek funding and enables the Commission to weigh more comparable proposals.

Third, it is essential that performance requirements are the same across all technologies. The Commission has expressed a desire that its support for broadband deployment to unserved households should be distributed through technology-neutral mechanisms.[81] In practice, however, disparate treatment persists. For example, in the Rural Utilities Service's broadband

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[78] Comments of Windstream Communications, Inc., on NBP Public Notice No. 11, GN Docket Nos. 09-47, 09-51, 09-147, at 9-10 (Nov. 4, 2009).

[79] *See id*. at 10, fn.18 (observing that facilities connecting the wireless Base Transceiver Station to the Mobile Switching Center/Fiber Aggregation can cross both the second mile and the middle mile of a wireline provider).

[80] *See* National Broadband Plan at 146 (citing Section 118 of the U.S. Internal Revenue Code). *See also* Comments of the United States Telecom Association on NBP Public Notice No. 28, GN Docket Nos. 09-47, 09-51, 09-147, at 9 (Jan. 8, 2010); Comments of Windstream Communications, Inc., on NBP Public Notice No. 28, GN Docket Nos. 09-47, 09-51, 09-147, at 9 (Jan. 8, 2010) (suggesting that the Commission clarify that universal service (and other direct financial assistance for broadband) is provided with the intent to induce capital expenditures, or propose legislation or concrete changes to IRS guidelines).

[81] *See, e.g.*, *NOI and NPRM* at ¶ 42.

stimulus program, a wireline provider had to construct a system 10 times as fast to be awarded the same number of points as an otherwise identical wireless provider with a system delivering a total of 2 Mbps upstream and downstream.[82] And at the Commission, the Broadband Assessment Model developed for the National Broadband Plan includes various assumptions that unduly favor wireless.[83] If an accelerated process is to function most efficiently and deliver robust service to unserved areas at the lowest possible cost, the Commission must hold all technologies to the same network management rules and speed and performance requirements.

V. THE COMMENTS MAKE IT CLEAR THAT GEOGRAPHIC UNITS MORE GRANULAR THAN COUNTY ARE PREFERABLE FOR EFFICIENT AND TECHNOLOGY-NEUTRAL DISTRIBUTION OF HIGH-COST FUNDING.

The comments in this proceeding almost universally oppose the use of county as the relevant geographic unit both for the analysis of costs of deploying and maintaining communications networks and for the distribution of future CAF funding. Because broadband is rarely if ever deployed on a county-by-county basis, a cost model based on counties would almost certainly be inaccurate and unreliable. Furthermore, though some might perceive county to be a technology-neutral geographic unit, the use of counties would largely exclude wireline telephone and cable providers from competing to receive CAF funding, because these providers seldom maintain facilities that can be leveraged to deliver service throughout entire counties.

Instead of using county as the relevant geographic unit, the Commission should take a two-part approach based on the two distribution mechanisms Windstream proposed in its initial

[82] BIP and BTOP NOFA, 74 Fed. Reg. at 33119.

[83] *See supra* Section II.C.

comments.[84] For consistently high-cost areas that will require ongoing funding for operation and maintenance of communications facilities, the provider of last resort and the appropriate funding level should be determined on a wire center basis as a default, with a mechanism for competitors to challenge this default and propose a different service area. For the distribution of one-time funding for deployment to unserved households in areas that are not consistently high-cost, a provider should be able to seek funding based upon its own geographic unit of choice, or at least its own aggregation of census blocks.

A. The Commenters Generally Agree That a Cost Model and Distribution Mechanism Based on Counties Would Be Flawed and Not Technology-Neutral.

The vast majority of commenters agree with Windstream's view that counties are not the appropriate geographic unit on which to base future cost modeling and CAF funding decisions.[85] Funding decisions must be based on conditions at a more granular level, because county-wide averages can disguise significant variations in costs to deploy and maintain networks in more granular areas within a county.[86] As AT&T notes, "the fact that a provider might have a positive

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[84] *See* Windstream Comments at 13-19.

[85] *See* Windstream Comments at 19-21.

[86] *See, e.g.*, CenturyLink Comments at 51 (noting that the OBI White Paper identifies more than 650,000 lines that are currently unserved but, because a larger portion of the county has been determined to be economic, there would be no dollars available from the CAF for those 650,000 lines"); Comments of Washington Utilities & Transportation Commission, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 5-6 (July 12, 2010) (Washington UTC Comments) (explaining why a "county-wide cost model" "may well mask the actual costs of deploying broadband networks throughout any particular county" and would be "unreliable and simply inappropriate for effective modeling of broadband costs in the state"). *See also* Nebraska Rural Independents Comments at 34-35 (noting that use of county in OBI White Paper likely led to underestimation of availability gap).

business case to serve some areas does not mean that it will extend service to neighboring areas in which deployment is likely to be a money losing proposition."[87]

Furthermore, the use of counties as the geographic unit for funding determination and distribution would as a practical matter largely exclude wireline telephone companies—the only entities that have shown any measurable interest in deploying to and serving as carriers of last resort in high-cost areas[88]—from competing to receive high-cost funding. CenturyLink illustrates the problem clearly in its comments: Of the 937 counties in which CenturyLink provides telephone service, in only 15 (less than 2 percent) does CenturyLink provide service throughout the entire county. CenturyLink serves 9.4 million households in these counties, but an additional 33.5 million households within these counties are in the service areas of other ILECs.[89] Deploying new wired facilities outside of an ILEC's service territory is extremely expensive and likely would mean that CenturyLink would not be considered the lowest-cost provider for a county, though it may well be the lowest-cost provider, by far, for large portions of the county. This is likely true for every ILEC, rural or non-rural, rate-of-return or price cap (as well as cable providers and, to a lesser degree, wireless carriers). Indeed, multiple parties observe that if county is used as the relevant unit for funding determinations, it will most likely

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[87] AT&T Comments at 15.

[88] *See supra* Section II.

[89] CenturyLink Comments at 23.

lead to the inefficient use of limited funding, because the Commission will not be able to leverage existing infrastructure and economies in more granular geographic units.[90]

B. For Consistently High-Cost Areas Needing Funding for Deployment and Operation/Maintenance of Communications Networks, the Default Geographic Unit Should Be Wire Center, with a Mechanism for Any Would-Be Competitors to Challenge This Default.

Windstream in its comments proposes a distinct distribution mechanism that would utilize a cost model when targeting funds to a single provider of last resort selected to offer broadband and voice services throughout a high-cost area requiring ongoing support.[91] For the purposes of this distribution mechanism, the provider of last resort and funding level should be determined on a wire center basis as a default, but the Commission should permit any would-be competitor to challenge this default and propose its own geographic unit in an area where it is willing to assume high-cost responsibilities.

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[90] *See, e.g.*, AT&T Comments at 15 (noting that "broadband providers do not make network build decisions at the county level" and "targeting and calculating support based on an area smaller than a county is more likely to generate the level of support needed"); Comments of NASUCA et al. on Notice of Inquiry, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 21-22 (July 12, 2010) (NASUCA Comments on NOI) ("Unfortunately, corporate geographies and political geographies are rarely in harmony. ILEC and wireless providers are not likely to have deployed network facilities with county boundaries in mind. Multiple ILECs often operate in legacy service areas in a particular county. Cable operators may have some county-based franchise areas, but are not limited to this geographic context.").

[91] *See* Windstream Comments at 14-16. *See also* Comments of NASUCA Comments on NOI at 8-9 (noting that "applying a model to evaluate the integrated provision of voice and broadband services" "will be especially useful for providing support where the current market (or indeed any real 'market-based' mechanisms) has and will fail to provide affordable and reasonably comparable broadband services").

A wire center-based regime will permit ILECs—the only entities that have shown any measurable interest in deploying fixed broadband to and serving as carriers of last resort in high-cost areas[92]—to compete for funding to deploy and use capital efficiently. Commenters correctly recognize that, as a default, wire center is preferable to other geographic units for a variety of reasons, including: (1) it reasonably reflects the geographic and demographic realities of service areas;[93] (2) it is the unit by which carrier-of-last-resort responsibilities have been established and thus would facilitate a seamless transition of those duties into the broadband era;[94] and (3) competing carriers often rely on parts of the ILEC infrastructure to obtain second and middle-mile capacity.[95] At the same time, Windstream's proposed regime also will afford other types of providers the opportunity to challenge the use of a wire center so that they can best leverage their own existing infrastructure to serve a geographic area. There is significant Commission precedent in support of this approach: The Commission has granted multiple wireless CETCs permission to redefine ILEC study areas to better resemble their license areas when applying for

[92] *See supra* Section II.

[93] USTelecom Comments at 26; CenturyLink Comments at 21 ("since these wire centers were built in a logical fashion to serve groups of customers in a geographic area, this same logic could inform a competing provider's decisions to build a network to provide broadband service to the same area").

[94] CenturyLink Comments at 21; USTelecom Comments at 26 (noting that wire center "is the unit by which the current universal service obligations will be replaced"). *See also* NASUCA Comments on NOI at 9 (stating that "given that current support is primarily for [ILECs] (and that the Commission is contemplating eliminating support for wireless carriers), this application of the model would suggest a focus on ILEC wireline facilities" (internal citations omitted)).

[95] CenturyLink Comments at 21-22.

federal support.[96] Employing wire centers as the standard basis for funding decisions but, similarly, allowing competitors to challenge this default would ensure that the limited high-cost funding is distributed in the most efficient way possible.

C. A Pick-Your-Own-Geographic-Unit Regime Is Appropriate for the Distribution of One-Time Funding for Broadband Deployment to Unserved Households in Areas that Are Not Consistently High-Cost.

For the distribution of one-time-only funding for broadband deployment to unserved households in areas that are not consistently high-cost, Windstream in its initial comments proposes a competitive-bidding process to identify the best-qualified provider in an area and the minimum level of subsidy required to achieve the desired build-out.[97] For this process, a regime in which providers select their own geographic unit—or at least their own aggregation of census blocks—would be most effective and technology-neutral. In this context, a new model analyzing costs at the census-block level should be used primarily as a backstop against potential abuse in a market-based distribution mechanism.[98]

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[96] *See, e.g., High-Cost Universal Service Support, Federal State Joint-Board on Universal Service, Alltel Communications, Inc., et al. Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 17940 (2008) (designating St. Lawrence Seaway as an ETC with a service area below the study level area of Citizens/Frontier).

[97] Windstream Comments at 16-19.

[98] Windstream Comments at 18. *See also* NASUCA et al. Comments on NOI at 21-22 ("If the focus is to be bringing broadband to unserved areas, then the model should use granular enough areas so that unserved areas can be identified and separated. . . . The determination of "bidding areas" is a difficult aspect of initiating an auction. . . . A census-block-level analysis would clearly be more granular, adding to the complexity of the model. But such an approach appears more likely to match both current serving areas of broadband providers and the areas which are

A diverse selection of commenters agrees that permitting providers to propose their own geographic areas would likely foster an efficient distribution of funding and ensure that the process does not favor any one technology.[99] At the least, if the Commission declines to install a pure pick-your-own-geographic-area regime for the distribution of one-time subsidies for deployment, the Commission should allow providers to select the aggregation of census blocks for which they are seeking support.[100] Census blocks are sufficiently granular to enable providers to approximate closely their desired service areas,[101] and represent a neutral geographic unit on which the Commission can base its cost modeling to provide a safeguard in

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not served by any current provider. Again, the required granularity will depend on the purpose to which the model is put.")

[99] *See, e.g.*, USTelecom Comments at 26 ("At least with respect to standalone, up-front funding for new broadband deployment, the best way to provide incentives for a company to take on new broadband build-out obligations associated with receipt of universal service support is to permit the company to define for itself the area in which it could construct a viable business case for provision of voice and broadband service. Such flexibility will result in the most efficient deployment of various technologies as well as the most efficient use of the Commission's scarce CAF dollars."); Comments of Rural Independent Competitive Alliance, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 20-21 (July 12, 2010) (RICA Comments); Comments of Mercatus Center (George Mason University), WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 10 ("The FCC could best mobilize individual carriers' particular knowledge about . . . opportunities by allowing carriers themselves to propose the areas they would serve when making subsidy bids.").

[100] AT&T Comments at 16 (suggesting high-cost universal service calculation based on a more granular geographic area than counties, "such as aggregations of census blocks"); NCTA Comments at 18 (asserting that a "better approach would be to define supported areas based on census blocks or groups of census blocks").

[101] *See, e.g.*, NASUCA et al. Comments on NOI at 20-21 (noting that a census-block "approach appears more likely to match both current serving areas of broadband providers and the areas which are **not** served by any current provider").

cases where there is insufficient competition to set an efficient subsidy level, or where a competitive-bidding process otherwise could permit over-subsidization.[102]

VI. THERE IS NO RATIONAL BASIS FOR CONTINUING TO DELAY PHASE-OUT OF CETC SUPPORT TO VERIZON WIRELESS AND SPRINT.

If the Commission hopes quickly to redirect funding toward broadband deployment, it cannot delay in harvesting the proverbial low-hanging fruit. To that end, there is no good reason that the Commission should not immediately implement the phase-out of CETC funding to Sprint and Verizon Wireless, and require that this phase-out be completed by December 31, 2012, in accordance with the companies' voluntary commitments in 2008.[103] In fact, as NASUCA notes in its comments, it is unclear why these phase-outs have not already begun and whether a Commission Order is necessary to implement them.[104]

Only Verizon argues that the Commission should not phase out CETC support to it and Sprint on a different schedule than that of other CETCs. Verizon asserts that moving forward

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[102] *See, e.g.*, Washington UTC Comments at 6-7 (noting that such an approach "would be able to examine deployment costs in a more granular fashion," leading to "more accurate results").

[103] *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, File Nos. 0003463892, et al., ITC-T/C-20080613-00270, et al., ISP-PDR-20080613-00012, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17529-17532, ¶¶ 192-197 (2008); *Applications of Sprint Nextel Corporation and Clearwire Corporation for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, File Nos. 0003462540 et al., Memorandum Opinion and Order and Declaratory Ruling, 233 FCC Rcd 17570, 17612, ¶ 108 (2008).

[104] Comments of National Association of State Utility Consumer Advocates, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 15 (July 12, 2010) (NASUCA Comments to NPRM).

with phasing out its CETC support under current conditions "would violate the express terms of [its] merger commitments . . . and would unfairly advantage other wireless competitors in a robustly competitive market."[105] This argument lacks foundation. Even Sprint, which is identically situated to Verizon Wireless, does not contest that it must phase out its legacy high-cost support by 2013.[106]

Verizon Wireless's and Sprint's merger commitments state that "[i]n the event that the Commission adopts a different transition mechanism or successor mechanism to the currently capped equal support rule in a rulemaking of general applicability . . . then that rule of general applicability would apply instead."[107] Even assuming Verizon's interpretation—that a later-adopted transition mechanism or successor mechanism to the currently capped equal support rule would supersede the five-year phase-out—there has been no later-adopted transition mechanism that would supersede the phase-out. The current proposed rules are exactly that—*proposed*. And even if the current proposal were to be adopted later this year, there is no reason why Verizon Wireless should not already be obligated to reduce its CETC support by 40 percent, to account for phase-outs envisioned for each of the past two years. Accordingly, the Commission should immediately begin the phase-out of CETC support to Verizon Wireless and Sprint, which can redirect up to $3.9 billion (present value in 2010 dollars) to the CAF coffers over the next

[105] Verizon Comments at 20.

[106] *See* Sprint Comments at 14 (stating that "Sprint and Verizon Wireless are expected to have completed the phase-out of their respective legacy high-cost USF support by 2013" and recommending phase-outs of other CETC support by the end of 2014).

[107] Verizon Comments at 20.

decade.[108] In addition, as discussed at length in the comments of Windstream and others, the Commission should phase out all other CETCs' high-cost support by the end of 2015.[109]

VII. IT WOULD BE CONTRARY TO LAW AND GOOD POLICY TO PAIR ANY IAS REDUCTIONS WITH CONCURRENT REDUCTIONS IN FROZEN ICLS.

Windstream supports the conversion of Interstate Common Line Support ("ICLS") to a frozen amount per line, as well as the capping of each company's future overall annual ICLS.[110] These measures, in conjunction with other reforms, would limit growth in the legacy high-cost program and enable the Commission to begin to recapture universal service funding to put toward targeted support for both broadband and voice networks. However, Windstream disagrees with Verizon's proposal that price cap companies' frozen per-line ICLS (currently received by companies that transitioned to price cap regulation after the establishment of the IAS mechanism) be reduced like IAS for the purposes of reform of the high-cost program.[111] Such an approach would be contrary to law and policy that intended the two mechanisms be distinct.

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[108] *See* National Broadband Plan at 147.

[109] *See, e.g.*, Windstream Comments at 26-32; NASUCA Comments to NPRM at 15-18 (noting that CETC support "has not been proven to be needed" and "could be eliminated, with the funds being used for the CAF, without any significant harm to the public interest"); Qwest Comments at 23-24 (stating that CETC support "is not advancing universal service"); Sprint Comments at 14 (recommending that all CETC support should be phased out by 2014 or within three years of adoption of an order, whichever is later); Comcast Comments at 6-7 (stating that the Commission should "gradually eliminate funding" for remaining CETCs); Comments of Nebraska Public Service Commission and North Dakota Public Service Commission, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, at 14 (July 12, 2010) (Nebraska PSC Comments).

[110] *See* Windstream Comments at 36-37.

[111] *See* Verizon Comments at 17-18.

When Windstream in 2008 petitioned to convert its rate-of-return subsidiaries to price cap regulation, there was no clear path for such a conversion.[112] The Commission could have placed Windstream's converted study areas under the regime set forth in the *CALLS Order* and made them eligible for a portion of the $650 million IAS fund,[113] or the Commission could have granted a partial waiver of the IAS rules to enable Windstream to receive IAS funding without affecting other IAS recipients.[114] (In fact, several parties commenting on the Petition urged the Commission to ensure that Windstream's conversion did not affect their own receipt of IAS.)[115] However, the Commission deliberately chose instead to grant Windstream a waiver to allow it to continue to receive ICLS for the converted study areas at a frozen per-line amount that was based on Windstream's 2007 cost and revenue data.[116] This support would continue as long as

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[112] *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, Order, WC Docket No. 07-171, 23 FCC Rcd 5294 (2008) (Windstream Petition).

[113] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, 15 FCC Rcd 12962, 13044-45, ¶ 198 (2000) (*CALLS Order*).

[114] *See* Windstream Petition at 33-34.

[115] *See, e.g.*, Comments of Embarq Corporation, WC Docket No. 07-171, at 6-7 (Sept. 24, 2007) (arguing that the "Commission should ensure Windstream's conversion does not dilute IAS support for other price cap carriers"); Comments of Frontier Communications, Inc., WC Docket No. 07-171, at 4 (Sept. 24, 2007) (noting that "[i]t would be equally unfair to allow a carrier converting to price caps to receive IAS, but only by reducing the amount of IAS received by existing price cap carriers").

[116] Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief, Order, WC Docket No. 07-171, 23 FCC Rcd 5294, 5302-03, ¶ 20-21 (2008).

Windstream retained eligible lines.[117] Under this approach, Windstream also agreed to forego any Primary Interexchange Carrier Charges ("PICC") or Carrier Common Line ("CCL") charges to which it might have had access under the *CALLS* regime, and to forego an increase in its non-primary residential Subscriber Line Charge ("SLC") cap.[118]

Windstream and a number of other mid-sized telephone companies have since converted many of their subsidiaries to price cap regulation under the framework set forth in the *Windstream Order*.[119] In each case, the Commission has effectively converted the company's ICLS to a frozen amount per line based on its cost and revenue data from the past year, and the company has agreed to forego potential increases in its non-primary residential line SLC caps, as well as any PICC and CCL charges to which it would have had access under *CALLS*. For the Commission now to reduce this frozen ICLS as if it were IAS—even though frozen ICLS has a different basis than IAS and was accepted by the companies under different terms and with different expectations—would be unjustified and contrary to sound public policy.

In addition, any finding to the contrary could subject newly proposed rate-of-return reforms to undue uncertainty and opposition. In particular, the Commission now proposes to convert the ICLS of existing rate-of-return carriers to a frozen amount per line, and to continue

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[117] *Id.* at 5304, ¶ 22 (noting that the amount of ICLS Windstream receives will decline if its number of lines declines).

[118] *Id.* at ¶ 20.

[119] *See NOI and NPRM* at fn.123; Responses of Julius Genachowski to Questions for the Record, Senate Committee on Commerce, Science, and Transportation Hearing on Reviewing the National Broadband Plan (Genachowski Responses), at 8 (June 15, 2010) ("[A] growing number of rural carriers have voluntarily elected to convert to price cap regulation to become more efficient and competitive.").

to distribute ICLS for an indefinite period going forward. In other words, these carriers essentially will be placed under the framework pioneered by Windstream and other mid-sized companies.[120] To strip Windstream and other recently converted companies of this essential support, merely because they dared voluntarily to leave the comfort of rate-of-return regulation one or two years earlier, is nonsensical—and could heighten the fears and resistance of rate-of-return carriers asked to follow in Windstream's footsteps. Thus, despite Verizon's arguments to the contrary, the Commission should consider price cap companies' frozen per-line ICLS as what it is—ICLS, not IAS—for the purposes of reforms to the high-cost program.

[120] *NOI and NPRM* at ¶¶ 55-56.

VIII. CONCLUSION

The Commission is taking on an ambitious agenda for increasing broadband availability, and indications are this project will be even bigger—and more costly—than many originally anticipated. Accordingly, it is crucial that the Commission act now to begin addressing inequities in distribution of high-cost support to rural areas. The Commission must eliminate the rural-rural divide if it is to achieve the broadest possible expansion of broadband with limited funding and without imposing unfunded mandates on carriers.

Respectfully submitted,

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